

AMENDED IN SENATE JUNE 1, 2006

AMENDED IN SENATE JUNE 27, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1749

Introduced by ~~Committee on Governmental Organization~~
(~~Jerome Horton (Chair), Plescia (Vice Chair), Aghazarian,~~
~~Bermudez, Calderon, Chavez, Garcia, Levine, Liu, Torrico, and~~
~~Yee~~) *Assembly Member Jerome Horton*
(Principal coauthor: Senator Ortiz)

March 9, 2005

An act to amend Sections 22978.4, 22978.7, 22979.2, 22979.7, and 22980.2 of the Business and Professions Code, and to add Section 30361.5 to the Revenue and Taxation Code, relating to cigarettes and tobacco products. *An act to amend Sections 22971 and 22980.1 of, to add Sections 22979.21, 22979.22, 22979.23, and 22979.24 to, and to repeal Chapter 7 (commencing with Section 22995) of Division 8.6 of, the Business and Professions Code, to amend Section 308.1 of, and to amend and repeal Section 830.11 of, the Penal Code, and to amend Sections 30019, 30435, 30473, 30474, 30474.1, and 30475 of, and to repeal Sections 30216 and 30359 of, the Revenue and Taxation Code, relating to cigarettes and tobacco products, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1749, as amended, ~~Committee on Governmental Organization~~ *Jerome Horton*. Cigarettes and tobacco products.

(1) *The California Cigarette and Tobacco Products Licensing Act of 2003 provides, until January 1, 2010, for the licensure by the State*

Board of Equalization of manufacturers, distributors, wholesalers, importers, and retailers of cigarettes or tobacco products that are engaged in business in California.

This bill would require manufacturers and importers of specified tobacco products engaged in business in this state to obtain and maintain a license. This bill would require these manufacturers or importers to provide the board with specified information, submit a license application to the board, as described, pay a one-time license fee of \$2,000 or \$10,000, as specified, and submit a monthly report to the board providing information regarding sales of tobacco products, including the wholesale cost of the tobacco products, subject to suspension or revocation of the license, as provided. This bill would require an applicant to verify the accuracy of the application and to affirm that the applicant has not been convicted of a felony and has not and will not violate or cause or permit to be violated the licensing requirement, subject to the imposition of criminal penalties as a misdemeanor, thus imposing a state-mandated local program.

(2) Existing law defines an “importer” as any purchaser in the United States of cigarettes manufactured outside of the United States.

This bill would also redefine “importer” to include any person who removes cigarettes or tobacco products from a foreign country, Puerto Rico, or the United States Virgin Islands for sale in California from a customs bonded warehouse. This bill would include in the new definition of an importer any person who smuggles or otherwise unlawfully brings cigarettes or tobacco products into the state for sale.

(3) The California Cigarette and Tobacco Products Licensing Act of 2003 prohibits manufacturers from selling cigarettes to distributors, wholesalers, importers, retailers, or any other person who is not licensed, as specified. The act further prohibits retailers, distributors, wholesalers, or importers from purchasing packages of cigarettes from any person unless he or she is in compliance with these licensure requirements, as specified. A violation of any of these provisions is a misdemeanor.

This bill would expand the above prohibitions by also providing that a manufacturer shall not sell tobacco products to retailers, distributors, wholesalers, importers, or any other person who is not licensed, as provided, and would prohibit a retailer, wholesaler, or importer from purchasing packages of cigarettes or tobacco products

from any person who is not licensed or whose license has been suspended or revoked.

By expanding the scope of an existing crime, this bill imposes a state-mandated local program.

(4) The act, in addition to providing for the licensing and regulation of manufacturers, distributors, wholesalers, importers, and retailers of cigarettes or tobacco products that are engaged in business in California, prohibits a manufacturer, distributor, wholesaler, importer, retailer, or any other person from selling counterfeit cigarette and tobacco products and provides that a violation of that prohibition is a crime. The act imposes specified fines or imprisonment for possessing, selling, or buying false or fraudulent cigarette tax stamps. The act also requires manufacturers and importers of cigarette products that provide those products to distributors or wholesalers to pay the board a fee for cigarettes sold in this state. Under existing law, the act is repealed, by its own terms, January 1, 2010.

This bill would delete the repeal date specified in current law, extending indefinitely the operation of the California Cigarette and Tobacco Products Licensing Act of 2003.

(5) Existing law regulates the distribution and sales of various types of tobacco products in the state, and specifies civil and criminal sanctions for violations of that regulatory scheme. Existing law prohibits any person from selling, offering for sale, distributing, or importing specific types of tobacco products, including bidis or beedies, unless the product is sold, offered for sale, or intended to be sold in a business that excludes minors from its premises. Existing law makes a violation of this prohibition a misdemeanor or makes that person subject to civil action.

This bill would amend the existing definition of “bidis” or “beedies” to include any product that is marketed and sold as “bidis” or “beedies.” This bill would also expand this prohibition to include tobacco products commonly referred to as “blunt wraps,” as defined, and thus impose a state-mandated local program by changing the definition of an existing crime. This bill would clarify that persons who violate this prohibition are subject to both criminal and civil liability.

(6) Existing law requires the State Board of Equalization to administer various taxes and fees, including taxes with respect to cigarettes and tobacco products, alcoholic beverages, motor vehicle

fuel, and diesel fuel, among others. Existing law authorizes, until January 1, 2010, persons designated by the Executive Director of the State Board of Equalization to exercise the arrest powers of a peace officer in the enforcement of the taxes and fees administered by the State Board of Equalization.

This bill would delete the repeal date specified in existing law, extending the ability of designated persons to exercise the specified arrest powers indefinitely.

(7) Existing law establishes procedures under the Cigarette and Tobacco Products Tax Law for imposing taxes on sellers of black-market cigarettes and tobacco products, and procedures for the seizure and sale of property secured by liens for delinquencies under the Cigarette and Tobacco Products Tax Law. Existing law repeals these provisions, effective January 1, 2010.

This bill would delete the repeal date specified in current law, extending the authorization for these procedures indefinitely.

(8) The Cigarette and Tobacco Products Tax Law authorizes, until January 1, 2010, employees of the State Board of Equalization, under specified conditions, to enter and inspect a building, facility, site, or place, as described, where cigarettes or tobacco products are sold, produced, or stored, where there is evidence of tax evasion, or where there is failure to comply with the Master Settlement Agreement, a settlement entered into by states' attorneys general and various tobacco product manufacturers that provides for the allocation of money to the states and certain territories. Refusal of the inspection is subject to penalty.

This bill would delete the repeal date of this authorization, thereby extending the ability of specified board employees to enter and inspect the locations under the specific circumstances indefinitely.

(9) The Cigarette and Tobacco Products Tax Law requires distributors and wholesalers of cigarette and tobacco products to be licensed by the State Board of Equalization. That law requires a tax imposed by that law, with respect to distributions of cigarettes, to be paid by distributors through the use of stamps or meter register settings, and requires that these stamps or meter register settings be affixed to each package of cigarettes sold. That law prohibits the false or fraudulent making, altering, reuse, or counterfeiting of cigarette tax stamps or meter impressions by providing that a violation of that prohibition is a felony subject to imprisonment as specified, or to a fine of not less than \$1,000 and not more than \$10,000, or to both fine

and imprisonment. That law prohibits the sale of unstamped or unmetered cigarettes, as specified, the violation of which is punishable by a fine of up to \$1,000, imprisonment in a county jail for not more than one year, or by both a fine and imprisonment. That law authorizes, until January 1, 2010, the seizure and destruction of counterfeit cigarettes or tobacco products, as defined, and imposes misdemeanor punishment on the sale or possession thereof. That law imposes specified fines or imprisonment, or both, on a transporter who transports 40,000 or more cigarettes or tobacco products with a value of \$5,000 or more with the intent to defeat or evade the taxes imposed by that law under described conditions.

This bill would delete the repeal date and extend authorization for the seizure and destruction of counterfeit cigarettes or tobacco products and for the imposition of a misdemeanor for the sale and possession thereof. This bill would increase the fine for the sale of unstamped or unmetered cigarettes to \$25,000. This bill would also increase the fine imposed for falsely or fraudulently making a cigarette tax stamp or meter impression to \$25,000 and would increase the fine imposed on a transporter of cigarettes to \$25,000, for deposit into specified funds and accounts, including continuously appropriated funds, thereby making an appropriation.

By increasing the penalties for existing crimes, this bill imposes a state-mandated local program.

(10) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~(1) The California Cigarette and Tobacco Products Licensing Act of 2003 provides for the licensure, by the State Board of Equalization, of manufacturers, distributors, wholesalers, importers, and retailers of cigarette or tobacco products that are engaged in business in California and prohibits retailers, manufacturers, distributors, and wholesalers from distributing or selling those cigarette and tobacco products unless they are in compliance with those licensure requirements.~~

~~The act requires each distributor and each wholesaler to include information on each invoice for the sale of cigarettes or tobacco products, including a statement that all California cigarette and~~

~~tobacco product taxes are included in the total amount of the invoice. The act provides that failure to comply with that requirement constitutes a misdemeanor.~~

~~This bill would provide that a distributor that is also a retailer shall include either the above tax statement on each invoice for the sale of cigarettes or tobacco products or the amount of excise taxes due to the board by the distributor on the sale of cigarettes and tobacco products. In the case of other distributors and wholesalers, this bill would require these parties to include the amount of excise taxes due to the board on these invoices. Additionally, this bill would require a distributor or wholesaler to include the date the cigarettes or tobacco products are sold on each invoice. By changing the definition of a crime, this bill would impose a state-mandated local program.~~

~~(2) The act authorizes the board or a law enforcement agency to seize any cigarettes or tobacco products that do not meet the act's requirements. Upon a finding that any distributor, wholesaler, manufacturer, or importer has violated any provision of the act, the act authorizes the board, upon a first offense, to revoke or suspend the license or licenses of the distributor, wholesaler, manufacturer, or importer, and, upon a second or any subsequent offense, impose a civil penalty in an amount not to exceed the greater of 5 times the retail value of the cigarettes or tobacco products or \$5,000.~~

~~This bill would clarify that, upon a 2nd or subsequent offense, the board is authorized to impose a civil penalty in an amount not to exceed the greater of 5 times the retail value of the seized cigarettes or tobacco products or \$5,000.~~

~~(3) The act requires all manufacturers and all importers that begin operations in the state after January 1, 2004, to be charged an administration fee commensurate with their respective market share of cigarettes manufactured or imported by the manufacturer, and sold in this state during the next calendar year as estimated by the board.~~

~~This bill would clarify that all manufacturers and all importers that begin operations in the state after January 1, 2004, shall be charged a fee commensurate with their respective market share of cigarettes manufactured or imported by the manufacturer or importer, and sold in this state during the next calendar year as estimated by the board.~~

~~(4) Existing provisions within the act establish procedures for the seizure of cigarettes and tobacco products from a seller after a notification of suspension or revocation of their license.~~

~~This bill would specify that the State Board of Equalization or a law enforcement agency is empowered to seize cigarettes and tobacco products from unlicensed persons for the continued sales of cigarettes and tobacco products without a license.~~

~~(5) The State Board of Equalization administers various tax and fee programs, including the Sales and Use Tax Law and the Cigarette and Tobacco Products Tax Law. The tax and fee programs administered by the board generally require any person who collects tax or fee reimbursement in excess of the amount due to either refund the excess to their customer or remit the excess to the state.~~

~~This bill would apply these reimbursement provisions to the taxes imposed under the Cigarette and Tobacco Products Tax Law.~~

~~(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: ~~majority~~^{2/3}. Appropriation: ~~no~~^{yes}. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 22971 of the Business and Professions
2 Code is amended to read:
3 22971. For purposes of this division, the following terms
4 shall have the following meanings:
5 (a) “Board” means the State Board of Equalization.
6 (b) “Importer” means an importer as defined in Section 30019
7 of the Revenue and Taxation Code.
8 (c) “Distributor” means a distributor as defined in Section
9 30011 of the Revenue and Taxation Code.
10 (d) “Manufacturer” means a manufacturer of cigarettes *or*
11 *tobacco products* sold in this state.
12 (e) “Retailer” means a person who engages in this state in the
13 sale of cigarettes or tobacco products directly to the public from
14 a retail location. Retailer includes a person who operates vending
15 machines from which cigarettes or tobacco products are sold in
16 this state.
17 (f) “Retail location” means both of the following:

1 (1) Any building from which cigarettes or tobacco products
2 are sold at retail.

3 (2) A vending machine.

4 (g) “Wholesaler” means a wholesaler as defined in Section
5 30016 of the Revenue and Taxation Code.

6 (h) “Cigarette” means a cigarette as defined in Section 30003
7 of the Revenue and Taxation Code.

8 (i) “License” means a license issued by the board pursuant to
9 this division.

10 (j) “Licensee” means any person holding a license issued by
11 the board pursuant to this division.

12 (k) “Sale” or “sold” means a sale as defined in Section 30006
13 of the Revenue and Taxation Code.

14 (l) “Tobacco products” means tobacco products as defined in
15 subdivision (b) of Section 30121 and subdivision (b) of Section
16 30131.1 of the Revenue and Taxation Code.

17 (m) “Unstamped package of cigarettes” means a package of
18 cigarettes that does not bear a tax stamp as required under Part 13
19 (commencing with Section 30001) of Division 2 of the Revenue
20 and Taxation Code, including a package of cigarettes that bears a
21 tax stamp of another state or taxing jurisdiction, a package of
22 cigarettes that bears a counterfeit tax stamp, or a stamped or
23 unstamped package of cigarettes that is marked “Not for sale in
24 the United States.”

25 (n) “Person” means a person as defined in Section 30010 of
26 the Revenue and Taxation Code.

27 (o) “Package of cigarettes” means a package as defined in
28 Section 30015 of the Revenue and Taxation Code.

29 (p) (1) “Control” or “controlling” means possession, direct or
30 indirect, of the power:

31 (A) To vote 25 percent or more of any class of the voting
32 securities issued by a person.

33 (B) To direct or cause the direction of the management and
34 policies of a person, whether through the ownership of voting
35 securities, by contract (other than a commercial contract for
36 goods or nonmanagement services), or otherwise provided;
37 however, no individual shall be deemed to control a person solely
38 on account of being a director, officer, or employee of such
39 person.

(2) For purposes of subparagraph (B) of this subdivision, a person who, directly or indirectly, owns, controls, holds, with the power to vote, or holds proxies representing 10 percent or more of the then outstanding voting securities issued by another person, is presumed to control such other person.

(3) For purposes of this division, the board may determine whether a person in fact controls another person.

(q) “Law enforcement agency” means a sheriff, a police department, or a city, county, or city and county agency or department designated by the governing body of that agency to enforce this chapter or to enforce local smoking and tobacco ordinances and regulations.

(r) “Brand family” has the same meaning as that term is defined in paragraph (2) of subdivision (a) of Section 30165.1 of the Revenue and Taxation Code.

SEC. 2. Section 22979.21 is added to the Business and Professions Code, to read:

22979.21. Every manufacturer or importer of tobacco products shall obtain and maintain a license under this division to engage in the sale of tobacco products. In order to be eligible for obtaining and maintaining a license under this division, a manufacturer or importer shall do all of the following in the manner specified by the board:

(a) Submit to the board a list of all tobacco products they manufacture or import.

(b) Update the list of all tobacco products they manufacture or import whenever a new or additional product is manufactured or imported or a listed product is no longer manufactured or imported.

(c) Consent to jurisdiction of the California courts for the purpose of enforcement of this division and appoint a registered agent for service of process in this state and identify the registered agent to the board.

SEC. 3. Section 22979.22 is added to the Business and Professions Code, to read:

22979.22. (a) An application for a license by a manufacturer or by an importer of tobacco products shall be on a form prescribed by the board and shall include the following:

(1) The name, address, and telephone number of the applicant. For applicants whose corporate offices are at a separate

1 location, the business name, address, and telephone number of
2 the corporate office. Citations issued to licensees shall be
3 forwarded to all addressees on the license.

4 (2) If any other licenses have been issued by the board to the
5 applicant, the license or permit numbers for each license or
6 permit then in effect.

7 (3) A statement by the applicant affirming that the applicant
8 has not been convicted of a felony and has not violated and will
9 not violate or cause or permit to be violated any of the provisions
10 of this division or any rule of the board applicable to the
11 applicant or pertaining to the manufacture, sale, or distribution
12 of cigarettes or tobacco products. If the applicant is unable to
13 affirm this statement, the application shall contain a statement by
14 the applicant of the nature of any violation or the reasons that
15 will prevent the applicant from complying with the requirements
16 with respect to the statement.

17 (4) A statement by the applicant that the contents of the
18 application are complete, true, and correct. Any person who
19 signs a statement pursuant to this subdivision that asserts the
20 truth of any material matter that he or she knows to be false is
21 guilty of a misdemeanor punishable by imprisonment of up to one
22 year in the county jail, or a fine of not more than one thousand
23 dollars (\$1,000), or both the imprisonment and the fine.

24 (5) Signature of the applicant.

25 (6) The name, address, and telephone number of the person
26 designated by the manufacturer or the importer as its agent for
27 receipt of service of process in this state.

28 (7) Any other information the board may require.

29 (b) The board may investigate to determine the truthfulness
30 and completeness of the information provided in the application.

31 (c) The board shall provide electronic means for applicants to
32 download and submit applications.

33 SEC. 4. Section 22979.23 is added to the Business and
34 Professions Code, to read:

35 22979.23. (a) Every manufacturer or importer of chewing
36 tobacco or snuff shall submit with each application a one-time
37 license fee of ten thousand dollars (\$10,000).

38 (b) Every manufacturer or importer of tobacco products,
39 excluding chewing tobacco or snuff, shall submit with each

1 *application a one-time license fee of two thousand dollars*
2 *(\$2,000).*

3 *SEC. 5. Section 22979.24 is added to the Business and*
4 *Professions Code, to read:*

5 *22979.24. (a) Every manufacturer or importer holding a*
6 *license pursuant to Section 22979.21 shall file a monthly report*
7 *to the board, in a manner specified by the board, including, but*
8 *not limited to, the following:*

9 *(1) A list of all licensed distributors that received the*
10 *manufacturer's or importer's tobacco products.*

11 *(2) The total wholesale cost of the products.*

12 *(b) The board may suspend the license or revoke the license,*
13 *pursuant to the provisions applicable to the revocation of a*
14 *license set forth in Section 30148 of the Revenue and Taxation*
15 *Code, of any importer or any manufacturer that has failed to*
16 *comply with the requirements of this section.*

17 *SEC. 6. Section 22980.1 of the Business and Professions*
18 *Code is amended to read:*

19 *22980.1. (a) No manufacturer shall sell cigarettes or tobacco*
20 *products to a distributor, wholesaler, importer, retailer, or any*
21 *other person who is not licensed pursuant to this division or*
22 *whose license has been suspended or revoked.*

23 *(b) (1) Except as provided in paragraph (2), no distributor,*
24 *wholesaler, or importer shall sell cigarettes or tobacco products*
25 *to a retailer, wholesaler, distributor, or any other person who is*
26 *not licensed pursuant to this division or whose license has been*
27 *suspended or revoked.*

28 *(2) This subdivision does not apply to any sale of cigarettes or*
29 *tobacco products by a distributor, wholesaler, importer, or any*
30 *other person to a retailer, wholesaler, distributor, or any other*
31 *person that the state, pursuant to the United States Constitution,*
32 *the laws of the United States, or the California Constitution, is*
33 *prohibited from regulating.*

34 *(c) No retailer, distributor, wholesaler, or importer shall*
35 *purchase packages of cigarettes or tobacco products from a*
36 *manufacturer who is not licensed pursuant to this division or*
37 *whose license has been suspended or revoked.*

38 *(d) No retailer, distributor, wholesaler, or importer shall*
39 *purchase cigarettes or tobacco products from any person who is*

1 required to be licensed pursuant to this division but who is not
2 licensed or whose license has been suspended or revoked.

3 (e) Each separate sale to, or by, a retailer, wholesaler,
4 distributor, importer, manufacturer, or any other person who is
5 not licensed pursuant to this division shall constitute a separate
6 violation.

7 (f) No manufacturer, distributor, wholesaler, or importer may
8 sell cigarette or tobacco products to any retailer or wholesaler
9 whose license has been suspended or revoked unless all
10 outstanding debts of that retailer or wholesaler that are owed to a
11 wholesaler or distributor for cigarette or tobacco products are
12 paid and the license of that retailer or wholesaler has been
13 reinstated by the board. Any payment received from a retailer or
14 wholesaler shall be credited first to the outstanding debt for
15 cigarettes or tobacco products and must be immediately reported
16 to the board. The board shall determine the debt status of a
17 suspended retailer or wholesaler licensee 25 days prior to the
18 reinstatement of the license.

19 (g) No importer, distributor, or wholesaler, or distributor
20 functioning as a wholesaler, or retailer, shall purchase, obtain, or
21 otherwise acquire any package of cigarettes to which a stamp or
22 meter impression may not be affixed in accordance with
23 subdivision (b) of Section 30163 of the Revenue and Taxation
24 Code, or any cigarettes obtained from a manufacturer or importer
25 that cannot demonstrate full compliance with all requirements of
26 the federal Cigarette Labeling and Advertising Act (15 U.S.C.
27 Sec. 13335a et seq.) for the reporting of ingredients added to
28 cigarettes.

29 (h) Failure to comply with the provisions of this section shall
30 be a misdemeanor subject to penalties pursuant to Section 22981.

31 *SEC. 7. Chapter 7 (commencing with Section 22995) of*
32 *Division 8.6 of the Business and Professions Code is repealed.*

33 *SEC. 8. Section 308.1 of the Penal Code is amended to read:*

34 308.1. (a) Notwithstanding any other provision of law, no
35 person shall sell, offer for sale, distribute, or import any tobacco
36 product commonly referred to as “bidis” or “beedies,” unless that
37 tobacco product is sold, offered for sale, or intended to be sold in
38 a business establishment that prohibits the presence of persons
39 under 18 years of age on its premises.

(b) For purposes of this section, “bidis” or “beedies” means—
any of the following:

(1) A product containing tobacco that is wrapped in temburni leaf (*diospyros melanoxylon*) or tendu leaf (*diospyros exculpra*).

(2) A product that is marketed and sold as “bidis” or “beedies.”

(c) Notwithstanding any other provision of law, no person shall sell, offer for sale, distribute, or import any tobacco product commonly referred to as “blunt wraps.”

(d) For purposes of this section, “blunt wraps” means any of the following:

(1) A product made of tobacco, but contains less than 50 percent tobacco, that is designed for use as a wrap for another substance that is smoked.

(2) A product that is marketed and sold as a blunt wrap.

(e)

(e) Any person who violates this section is guilty of a misdemeanor ~~or~~ and is also subject to a civil action brought by the Attorney General, a city attorney, county counsel, or district attorney for an injunction and a civil penalty of up to two thousand dollars (\$2,000) per violation. This subdivision does not affect any other remedies available for a violation of this section.

SEC. 9. Section 830.11 of the Penal Code, as amended by Section 1 of Chapter 190 of the Statutes of 2005, is amended to read:

830.11. (a) The following persons are not peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 and the power to serve warrants as specified in Sections 1523 and 1530 during the course and within the scope of their employment, if they receive a course in the exercise of those powers pursuant to Section 832. The authority and powers of the persons designated under this section shall extend to any place in the state:

(1) Persons employed by the Department of Financial Institutions designated by the Commissioner of Financial Institutions, provided that the primary duty of these persons shall be the enforcement of, and investigations relating to, the provisions of law administered by the Commissioner of Financial Institutions.

1 (2) Persons employed by the Department of Real Estate
2 designated by the Real Estate Commissioner, provided that the
3 primary duty of these persons shall be the enforcement of the
4 laws set forth in Part 1 (commencing with Section 10000) and
5 Part 2 (commencing with Section 11000) of Division 4 of the
6 Business and Professions Code. The Real Estate Commissioner
7 may designate persons under this section, who at the time of their
8 designation, are assigned to the Special Investigations Unit,
9 internally known as the Crisis Response Team.

10 (3) Persons employed by the State Lands Commission
11 designated by the executive officer, provided that the primary
12 duty of these persons shall be the enforcement of the law relating
13 to the duties of the State Lands Commission.

14 (4) Persons employed as investigators of the Investigations
15 Bureau of the Department of Insurance, who are designated by
16 the Chief of the Investigations Bureau, provided that the primary
17 duty of these persons shall be the enforcement of the Insurance
18 Code and other laws relating to persons and businesses, licensed
19 and unlicensed by the Department of Insurance, who are engaged
20 in the business of insurance.

21 (5) Persons employed as investigators and investigator
22 supervisors of the Consumer Services Division or the Rail Safety
23 and Carrier Division of the Public Utilities Commission who are
24 designated by the commission's executive director and approved
25 by the commission, provided that the primary duty of these
26 persons shall be the enforcement of the law as that duty is set
27 forth in Section 308.5 of the Public Utilities Code.

28 (6) (A) Persons employed by the State Board of Equalization,
29 Investigations Division, who are designated by the board's
30 executive director, provided that the primary duty of these
31 persons shall be the enforcement of laws administered by the
32 State Board of Equalization.

33 (B) Persons designated pursuant to this paragraph are not
34 entitled to peace officer retirement benefits.

35 (7) Persons employed by the Department of Food and
36 Agriculture and designated by the Secretary of Food and
37 Agriculture as investigators, investigator supervisors, and
38 investigator managers, provided that the primary duty of these
39 persons shall be enforcement of, and investigations relating to,

1 the Food and Agricultural Code or Division 5 (commencing with
2 Section 12001) of the Business and Professions Code.

3 (b) Notwithstanding any other provision of law, persons
4 designated pursuant to this section may not carry firearms.

5 (c) Persons designated pursuant to this section shall be
6 included as “peace officers of the state” under paragraph (2) of
7 subdivision (c) of Section 11105 for the purpose of receiving
8 state summary criminal history information and shall be
9 furnished that information on the same basis as peace officers of
10 the state designated in paragraph (2) of subdivision (c) of Section
11 11105.

12 ~~(d) This section shall remain in effect until January 1, 2010,~~
13 ~~and as of that date shall be repealed.~~

14 *SEC. 10. Section 830.11 of the Penal Code, as amended by*
15 *Section 2 of Chapter 190 of the Statutes of 2005, is repealed.*

16 ~~830.11. (a) The following persons are not peace officers but~~
17 ~~may exercise the powers of arrest of a peace officer as specified~~
18 ~~in Section 836 and the power to serve warrants as specified in~~
19 ~~Sections 1523 and 1530 during the course and within the scope~~
20 ~~of their employment, if they receive a course in the exercise of~~
21 ~~those powers pursuant to Section 832. The authority and powers~~
22 ~~of the persons designated under this section shall extend to any~~
23 ~~place in the state:~~

24 ~~(1) Persons employed by the Department of Financial~~
25 ~~Institutions designated by the Commissioner of Financial~~
26 ~~Institutions, provided that the primary duty of these persons shall~~
27 ~~be the enforcement of, and investigations relating to, the~~
28 ~~provisions of law administered by the Commissioner of Financial~~
29 ~~Institutions:~~

30 ~~(2) Persons employed by the Department of Real Estate~~
31 ~~designated by the Real Estate Commissioner, provided that the~~
32 ~~primary duty of these persons shall be the enforcement of the~~
33 ~~laws set forth in Part 1 (commencing with Section 10000) and~~
34 ~~Part 2 (commencing with Section 11000) of Division 4 of the~~
35 ~~Business and Professions Code. The Real Estate Commissioner~~
36 ~~may designate persons under this section, who at the time of their~~
37 ~~designation, are assigned to the Special Investigations Unit,~~
38 ~~internally known as the Crisis Response Team:~~

39 ~~(3) Persons employed by the State Lands Commission~~
40 ~~designated by the executive officer, provided that the primary~~

1 duty of these persons shall be the enforcement of the law relating
2 to the duties of the State Lands Commission.

3 ~~(4) Persons employed as investigators of the Investigations~~
4 ~~Bureau of the Department of Insurance, who are designated by~~
5 ~~the Chief of the Investigations Bureau, provided that the primary~~
6 ~~duty of these persons shall be the enforcement of the Insurance~~
7 ~~Code and other laws relating to persons and businesses, licensed~~
8 ~~and unlicensed by the Department of Insurance, who are engaged~~
9 ~~in the business of insurance.~~

10 ~~(5) Persons employed as investigators and investigator~~
11 ~~supervisors of the Consumer Services Division or the Rail Safety~~
12 ~~and Carrier Division of the Public Utilities Commission who are~~
13 ~~designated by the commission's executive director and approved~~
14 ~~by the commission, provided that the primary duty of these~~
15 ~~persons shall be the enforcement of the law as that duty is set~~
16 ~~forth in Section 308.5 of the Public Utilities Code.~~

17 ~~(6) Persons employed by the Department of Food and~~
18 ~~Agriculture and designated by the Secretary of Food and~~
19 ~~Agriculture as investigators, investigator supervisors, and~~
20 ~~investigator managers, provided that the primary duty of these~~
21 ~~persons shall be enforcement of, and investigations relating to,~~
22 ~~the Food and Agricultural Code or Division 5 (commencing with~~
23 ~~Section 12001) of the Business and Professions Code.~~

24 ~~(b) Notwithstanding any other provision of law, persons~~
25 ~~designated pursuant to this section may not carry firearms.~~

26 ~~(c) Persons designated pursuant to this section shall be~~
27 ~~included as "peace officers of the state" under paragraph (2) of~~
28 ~~subdivision (c) of Section 11105 for the purpose of receiving~~
29 ~~state summary criminal history information and shall be~~
30 ~~furnished that information on the same basis as peace officers of~~
31 ~~the state designated in paragraph (2) of subdivision (c) of Section~~
32 ~~11105.~~

33 ~~(d) This section shall become operative on January 1, 2010.~~

34 *SEC. 11. Section 30019 of the Revenue and Taxation Code is*
35 *amended to read:*

36 30019. "Importer" means any purchaser for resale in the
37 United States of cigarettes manufactured outside of the United
38 States: of the following:

39 (a) Any person in California who removes cigarettes or
40 tobacco products manufactured in a foreign country, Puerto

1 *Rico, or the United States Virgin Islands, for sale in California*
2 *from a customs bonded warehouse.*

3 *(b) Any person who smuggles or otherwise unlawfully brings*
4 *in cigarettes or tobacco products manufactured in a foreign*
5 *country, Puerto Rico, or the United States Virgin Islands, for sale*
6 *in California.*

7 *SEC. 12. Section 30216 of the Revenue and Taxation Code is*
8 *repealed.*

9 ~~30216. This article shall remain in effect until January 1,~~
10 ~~2010, and as of that date shall be repealed.~~

11 *SEC. 13. Section 30359 of the Revenue and Taxation Code is*
12 *repealed.*

13 ~~30359. This article shall remain in effect until January 1,~~
14 ~~2010, and as of that date shall be repealed.~~

15 *SEC. 14. Section 30435 of the Revenue and Taxation Code is*
16 *amended to read:*

17 30435. (a) An employee of the board, upon presentation of
18 the appropriate identification and credentials, is authorized to
19 enter into, and conduct an inspection of any building, facility,
20 site, or place described in subdivision (b).

21 (b) Any building, facility, site, or place at which cigarette or
22 tobacco products are sold, produced, or stored, or any building,
23 facility, site, or place for which there is evidence of either the
24 evasion of the taxes imposed under this part, or the failure to
25 comply with the requirements of the Master Settlement
26 Agreement, as defined in subdivision (e) of Section 104556 of
27 the Health and Safety Code, including, but not limited to, Section
28 30165.1.

29 (c) Any inspection performed under the authority of this
30 section shall be performed in a reasonable manner and at a
31 reasonable time, taking into consideration the normal business
32 hours of the building, facility, site, or place that is inspected.

33 (d) Any person that refuses to allow an inspection authorized
34 under this section is subject to the penalty imposed by Section
35 30471.

36 ~~(e) This section shall remain in effect until January 1, 2010,~~
37 ~~and as of that date shall be repealed.~~

38 *SEC. 15. Section 30473 of the Revenue and Taxation Code is*
39 *amended to read:*

1 30473. Any person who falsely or fraudulently makes, forges,
2 alters, reuses or counterfeits any stamp or meter impression
3 provided for or authorized under this part, or tampers with any
4 metering machine authorized under this part, or causes or
5 procures to be falsely or fraudulently made, forged, altered,
6 reused, or counterfeited, any such stamp or meter impression or
7 knowingly and willfully utters, publishes, passes, or tenders as
8 genuine any such false, forged, altered, reused, or counterfeited
9 stamp or meter impression, for the purpose of evading the tax
10 imposed by this part, is guilty of a felony and subject to
11 imprisonment for two, three, or four years, or to a fine of not less
12 than one thousand dollars (\$1,000) and not more than ~~ten~~
13 ~~thousand dollars (\$10,000)~~ *twenty-five thousand dollars*
14 *(\$25,000)*, or to both fine and imprisonment.

15 *SEC. 16. Section 30474 of the Revenue and Taxation Code is*
16 *amended to read:*

17 30474. (a) Any person who knowingly possesses, or keeps,
18 stores, or retains for the purpose of sale, or sells or offers to sell,
19 any package of cigarettes to which there is not affixed the stamp
20 or meter impression required to be affixed under this part, when
21 those cigarettes have been obtained from any source whatever, is
22 guilty of a misdemeanor and shall for each offense be fined an
23 amount not to exceed ~~one thousand dollars (\$1,000)~~ *twenty-five*
24 *thousand dollars (\$25,000)*, or be imprisoned for a period not to
25 exceed one year in the county jail, or, at the discretion of the
26 court, be subject to both the fine and imprisonment in the county
27 jail.

28 (b) In addition to the fine or sentence, or both, each person
29 convicted under this section shall pay one hundred dollars (\$100)
30 for each carton of 200 cigarettes, or portion thereof, if that person
31 knowingly possessed, or kept, stored, or retained for the purpose
32 of sale, or sold or offered for sale in violation of this section, as
33 determined by the court. The court shall direct that 50 percent of
34 the penalty assessed be transmitted to the local prosecuting
35 jurisdiction, to be allocated for costs of prosecution, and 50
36 percent of the penalty assessed be transmitted to the State Board
37 of Equalization.

38 (c) This section does not apply to a licensed distributor that
39 possesses, keeps, stores, or retains cigarettes before the necessary
40 stamp or meter impression is affixed.

1 *SEC. 17. Section 30474.1 of the Revenue and Taxation Code*
2 *is amended to read:*

3 30474.1. (a) Notwithstanding any other provision of law, the
4 sale or possession for sale of counterfeit tobacco products, or the
5 sale or possession for sale of counterfeit cigarettes by a
6 manufacturer, importer, distributor, wholesaler, or retailer shall
7 result in the seizure of the product by the board or any law
8 enforcement agency and shall constitute a misdemeanor
9 punishable as follows:

10 (1) A violation with a total quantity of less than two cartons of
11 cigarettes shall be a misdemeanor punishable by a fine not to
12 exceed five thousand dollars (\$5,000), or imprisonment not to
13 exceed one year in a county jail, or both the fine and the
14 imprisonment, and shall also result in the revocation by the board
15 of the manufacturer, distributor, or wholesale license.

16 (2) A violation with a quantity of two cartons of cigarettes or
17 more shall be a misdemeanor punishable by a fine not to exceed
18 fifty thousand dollars (\$50,000) or imprisonment not to exceed
19 one year in a county jail, or both the fine and imprisonment, and
20 shall also result in the revocation by the board of the
21 manufacturer, distributor, or wholesaler license.

22 (b) A court shall consider a defendant's ability to pay when
23 imposing fines pursuant to this section.

24 (c) For the purposes of this section, counterfeit cigarette and
25 tobacco products include cigarette and tobacco products that
26 have false manufacturing labels, false or fraudulent stamps or
27 meter impressions, or a combination thereof.

28 (d) The board shall seize and destroy any cigarettes or other
29 tobacco products forfeited to the state under this section.

30 ~~(e) This section shall remain in effect until January 1, 2010,~~
31 ~~and as of that date shall be repealed.~~

32 *SEC. 18. Section 30475 of the Revenue and Taxation Code is*
33 *amended to read:*

34 30475. (a) Any transporter who transports cigarettes or
35 tobacco products upon the highways, roads or streets of this state
36 without having obtained a permit or without having a permit in
37 the transporting vehicle as prescribed by Section 30431 or
38 without having in the transporting vehicle the invoices, bills of
39 lading or delivery tickets for the cigarettes or tobacco products as
40 prescribed by Section 30432 is guilty of a misdemeanor and upon

1 conviction thereof shall be fined not more than one thousand
2 dollars (\$1,000) or be imprisoned for not more than one year in
3 the county jail, or be subject to both fine and imprisonment in the
4 discretion of the court.

5 (b) Any transporter who, with intent to defeat or evade or with
6 intent to aid another to defeat or evade the taxes imposed by this
7 part, at any given time transports 40,000 or more cigarettes or
8 tobacco products with a value of five thousand dollars (\$5,000)
9 or more upon the highways, roads or streets of this state without
10 having obtained a permit or without having a permit in the
11 transporting vehicle as prescribed by Section 30431 or without
12 having in the transporting vehicle the invoices, bills of lading or
13 delivery tickets for the cigarettes or tobacco products as
14 prescribed by Section 30432 shall be punished by imprisonment
15 in the county jail for not more than one year, or in the state
16 prison, or by fine of not more than ~~five thousand dollars (\$5,000)~~
17 *twenty-five thousand dollars (\$25,000)*, or be subject to both fine
18 and imprisonment in the discretion of the court.

19 *SEC. 19. No reimbursement is required by this act pursuant*
20 *to Section 6 of Article XIII B of the California Constitution*
21 *because the only costs that may be incurred by a local agency or*
22 *school district will be incurred because this act creates a new*
23 *crime or infraction, eliminates a crime or infraction, or changes*
24 *the penalty for a crime or infraction, within the meaning of*
25 *Section 17556 of the Government Code, or changes the definition*
26 *of a crime within the meaning of Section 6 of Article XIII B of the*
27 *California Constitution.*

28 ~~SECTION 1. Section 22978.4 of the Business and~~
29 ~~Professions Code is amended to read:~~

30 ~~22978.4. (a) Except as otherwise provided in paragraph (7),~~
31 ~~each distributor and each wholesaler shall include the following~~
32 ~~information on each invoice for the sale of cigarettes or tobacco~~
33 ~~products:~~

34 ~~(1) The name, address, and telephone number of the~~
35 ~~distributor or wholesaler.~~

36 ~~(2) The license number of the distributor or the wholesaler as~~
37 ~~provided by the board.~~

38 ~~(3) The amount of excise taxes due to the board by the~~
39 ~~distributor on the sale of cigarettes and tobacco products.~~

1 ~~(4) The name, address, and license number of the retailer,~~
2 ~~distributor, or wholesaler to whom cigarettes or tobacco products~~
3 ~~are sold.~~

4 ~~(5) An itemized listing of the cigarettes or tobacco products~~
5 ~~sold.~~

6 ~~(6) The date the cigarette or tobacco products are sold.~~

7 ~~(7) Notwithstanding paragraph (3), a distributor that is also a~~
8 ~~retailer shall include either one of the following on each invoice~~
9 ~~for the sale of cigarettes or tobacco products:~~

10 ~~(A) A statement that reads: "All California cigarette and~~
11 ~~tobacco product taxes are included in the total amount of this~~
12 ~~invoice."~~

13 ~~(B) The amount of excise taxes due to the board by the~~
14 ~~distributor on the distribution of cigarettes and tobacco products.~~

15 ~~(b) Each invoice for the sale of cigarettes or tobacco products~~
16 ~~shall be legible and readable.~~

17 ~~(c) Failure to comply with the requirements of this section~~
18 ~~shall be a misdemeanor subject to penalties pursuant to Section~~
19 ~~22981.~~

20 ~~SEC. 2. Section 22978.7 of the Business and Professions~~
21 ~~Code is amended to read:~~

22 ~~22978.7. In addition to any other civil or criminal penalty~~
23 ~~provided by law, upon a finding that any distributor or any~~
24 ~~wholesaler has violated any provision of this division, the board~~
25 ~~may take the following actions:~~

26 ~~(a) In the case of the first offense, the board may revoke or~~
27 ~~suspend the license or licenses of the distributor or the~~
28 ~~wholesaler pursuant to the procedures applicable to the~~
29 ~~revocation of a license set forth in Section 30148 of the Revenue~~
30 ~~and Taxation Code.~~

31 ~~(b) In the case of a second or any subsequent offense, in~~
32 ~~addition to the action authorized under subdivision (a), the board~~
33 ~~may impose a civil penalty in an amount not to exceed the~~
34 ~~greater of either of the following:~~

35 ~~(1) Five times the retail value of the seized cigarettes or~~
36 ~~tobacco products.~~

37 ~~(2) Five thousand dollars (\$5,000).~~

38 ~~SEC. 3. Section 22979.2 of the Business and Professions~~
39 ~~Code is amended to read:~~

~~22979.2. (a) On or before January 1, 2004, every manufacturer and every importer shall pay to the board an administration fee. The amount of the administration fee shall be one cent (\$0.01) per package of cigarettes (1) manufactured or imported by the manufacturer or the importer and (2) shipped into this state during the 2001 calendar year as reported to the board. The board shall notify each manufacturer and each importer of the amount due under this section.~~

~~(b) This section shall apply to every manufacturer and every importer required to be licensed pursuant to Section 22979. All manufacturers and all importers that may become eligible for licensure on or after December 1, 2003, shall be notified by the board of the appropriate fee due and shall pay that fee within 90 days of notification.~~

~~(c) All manufacturers and all importers that begin operations in the state after enactment of this division shall be charged a fee commensurate with their respective market share of (1) cigarettes manufactured or imported by the manufacturer or the importer and (2) sold in this state during the next calendar year as estimated by the board. The fee shall be at an amount not less than that paid pursuant to subdivision (a) by the smallest manufacturer, but may not be more than that paid by the eighth largest manufacturer.~~

~~(d) The board shall administer this fee in accordance with the Fee Collection Procedures Law, Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code.~~

~~SEC. 4. Section 22979.7 of the Business and Professions Code is amended to read:~~

~~22979.7. In addition to any other civil or criminal penalty provided by law, upon a finding that a manufacturer or importer has violated any provision of this division, the board may take the following actions:~~

~~(a) In the case of the first offense, the board may revoke or suspend the license or licenses of the manufacturer or importer pursuant to the procedures applicable to the revocation of a license set forth in Section 30148 of the Revenue and Taxation Code.~~

~~(b) In the case of a second or any subsequent offense, in addition to the action authorized under subdivision (a), the board~~

1 may impose a civil penalty in an amount not to exceed the
2 greater of either of the following:

3 (1) Five times the retail value of the seized cigarettes or
4 tobacco products defined as cigarettes under this section.

5 (2) Five thousand dollars (\$5,000).

6 SEC. 5. Section 22980.2 of the Business and Professions
7 Code is amended to read:

8 22980.2. (a) A person or entity that engages in the business
9 of selling cigarettes or tobacco products in this state without a
10 license or after a license has been suspended or revoked, and
11 each officer of any corporation that so engages in business, is
12 guilty of a misdemeanor punishable as provided in Section
13 22981.

14 (b) Each day after notification by the board or by a law
15 enforcement agency that a manufacturer, wholesaler, distributor,
16 importer, retailer, or any other person required to be licensed
17 under this act offers cigarette and tobacco products for sale or
18 exchange without a valid license for the location from which they
19 are offered for sale shall constitute a separate violation.

20 (c) Continued sales without a license or after a notification of
21 suspension or revocation shall constitute a violation of Section
22 22981, and shall result in the seizure of all cigarettes and tobacco
23 products in the possession of the person by the board or a law
24 enforcement agency. Any cigarettes and tobacco products seized
25 by the board or by a law enforcement agency shall be deemed
26 forfeited.

27 SEC. 6. Section 30361.5 is added to the Revenue and
28 Taxation Code, to read:

29 30361.5. When an amount represented by a person to a
30 customer as constituting reimbursement for taxes upon the
31 distribution of tobacco products pursuant to this part is computed
32 upon an amount that is not taxable or is in excess of the tax
33 amount and is actually paid by the customer to the person, the
34 amount so paid shall be returned by the person to the customer
35 upon notification by the State Board of Equalization or the
36 customer that an excess has been ascertained. If the person fails
37 or refuses to do so, the amount so paid, if knowingly or
38 mistakenly computed by the person upon an amount that is not
39 subject to the tax imposed by this part or that is in excess of the
40 tax amount, shall be remitted by that person to this state. Those

1 amounts remitted to the state by the person shall be credited by
2 the board to any amounts due and payable from that customer
3 that are subject to this part and that are based on the same
4 activity, and the balance, if any, shall constitute an obligation due
5 from the person to this state.

6 SEC. 7. ~~No reimbursement is required by this act pursuant to~~
7 ~~Section 6 of Article XIII B of the California Constitution because~~
8 ~~the only costs that may be incurred by a local agency or school~~
9 ~~district will be incurred because this act creates a new crime or~~
10 ~~infraction, eliminates a crime or infraction, or changes the~~
11 ~~penalty for a crime or infraction, within the meaning of Section~~
12 ~~17556 of the Government Code, or changes the definition of a~~
13 ~~crime within the meaning of Section 6 of Article XIII B of the~~
14 ~~California Constitution.~~